IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 731 OF 2004**

Horilal Algue Morya & Anr.. ... Appellants.

Versus

The Union of India..... .... Respondent.

Mr. G. J. Mohan Rao for the Appellants.
Mr. A. N. Samant for the Respondent.

**CORAM : ANOOP V. MOHTA, J.**

**DATED : 6TH DECEMBER, 2005.**

**P.C. :**

Heard learned Counsel for the parties.

2. This railway accident claim application under the Railways Act has been rejected by the Railway Tribunal even though there was no dispute that the deceased was a bonafide passenger at the relevant time. There is further no dispute that the deceased died as a result

of an untoward incident as defined under section 123(c) of the Railways Act. The Tribunal, however, while answering Issue No.3 rejected the application in toto by observing "However, there is nothing in the affidavit of the applicant Shri Horilal Mory to show or suggest that the deceased was his unmarried son. In the absence of the said evidence it cannot be held that the applicants are the dependents of the deceased within the meaning of Section 123(b)(i)." The rejection of this claim application on this ground is not correct. Considering the view I have already taken in First Appeal No. 474 of 2005 dated 22nd November, 2005, I am inclined to remand this matter for reconsideration of this issue.

3. In the circumstances, impugned judgment and order dated 16th February, 2004 passed in Case No. O. A. 99 00127 is quashed and set aside. Matter is remanded back to the Railway Claims Tribunal, Mumbai Bench, Mumbai for considering the matter afresh on merits. It is expected that this matter shall be heard and disposed of as early as possible and in any case not later than one year from the date of the receipt of the writ of this order. Parties are at liberty to lead evidence to support their respective claim, if

any.

4. This first appeal is disposed of, accordingly. There shall be no order as to costs.

Sd/-

**(ANOOP V. MOHTA, J.)**